LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 6711 | **NOTE PREPARED:** Jan 16, 2006
BILL NUMBER: SB 209 | **BILL AMENDED:**

SUBJECT: Community Investment Tax Credits.

FIRST AUTHOR: Sen. Dillon | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: The bill establishes a Community Investment Tax Credit against state tax liability for investments that: (1) qualify for a federal New Market Tax Credit against federal income tax liability; and (2) are made in a community investment entity that agrees to reinvest 100% of its allocation of federal New Market Tax Credits for low-income communities in Indiana and at least: (A) 30% of the money that is certified by the Indiana Economic Development Corporation for state community investment tax credits; and (B) 80% of its total assets in low-income community businesses in Indiana.

Effective Date: January 1, 2005 (retroactive).

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the new Community Investment Tax Credit. The Department's current level of resources should be sufficient to implement this change.

Indiana Economic Development Corporation (IEDC): The bill requires the IEDC to establish a program for accepting and reviewing applications for and certifying Community Investment Tax Credits. In addition, the bill requires certified development entities to annually report to the IEDC on their programs. The report must include: (1) information on state certified investments and federally qualified equity investments made by the entity in Indiana; (2) a description of each certified business receiving an investment attributable to a state certified investment; (3) an update on the financial status of the certified businesses; (4) an update on new jobs, increasing wages, total investment, and revenue impact derived from the state certified investment; and (5) the sum of the state credits designated by the certified development entity. The bill requires this report to be submitted to the IEDC and the Legislative Services Agency.

The bill also requires the IEDC to provide an evaluation of the state credit program on a biennial basis. The bill requires the evaluation to include an assessment of: (1) the effectiveness of each certified development entity that receives a state certified investment in creating new jobs and increasing wages in Indiana; and (2) the revenue impact of the certified development entity's state credit program. The IEDC's current level of resources should be sufficient to fulfill these administrative tasks. The December 5, 2005, state staffing table indicates that the IEDC had 39 vacant full-time positions, including one regional office position.

Explanation of State Revenues: *Summary:* This bill establishes the Community Investment Tax Credit allowing development entities certified by the IEDC to receive tax credits for equity investment that qualifies for the federal New Markets Tax Credit (NMTC) and is approved by the IEDC. The credit may be taken against the taxpayer's Adjusted Gross Income (AGI) Tax liability, Financial Institutions Tax liability, or Insurance Premiums Tax liability. The amount of credits that could potentially be claimed each year is indeterminable and depends on development entities qualifying for the federal NMTC and being certified for state tax liability credits by the IEDC. The credit applies only to qualified equity investment made after December 31, 2005, and can only be claimed beginning in tax year 2006. As a result of these circumstances, any fiscal impact from the credits likely would not arise before FY 2007.

Background: The nonrefundable tax credit is equal to 5% of the equity investment held by a corporate or individual taxpayer, including a pass through entity, that is certified for the credit by the IEDC. The only equity investment that qualifies for the state credit is equity investment that qualifies for the federal NMTC.
The bill requires the IEDC to establish a program to certify community investment entities that are qualified to receive the federal NMTC as state certified development entities. The bill requires the IEDC to certify a federally qualified community investment entity as a state certified development entity if the entity:

(1) is qualified to receive the federal NMTC;

(2) has a record of successfully providing capital or other financing to eligible businesses located in Indiana;

(3) has a record of successfully reinvesting equity investments qualified for the federal NMTC in Indiana;

(4) commits in an agreement with the IEDC to allocate 100% of its allocation of federal NMTCs for reinvestment in low-income communities in Indiana;

(5) commits in an agreement with the IEDC to continue to loan to or otherwise reinvest in low-income community businesses in Indiana for at least 14 years after the last federal NMTC allowance date for the entity's last state certified investment; and

(6) commits in an agreement with the IEDC to invest at least 80% of its aggregate gross assets (including reserves) in low-income community businesses.

The bill requires the IEDC to certify a federally qualified equity investment as a state certified investment only if: (1) a certified development entity designates the federally qualified equity investment for a state credit in a manner and on the designation form prescribed by the IEDC; and (2) the certified development entity that designates the qualified equity investment for a state credit is in compliance with the agreements entered into with the IEDC by the certified development entity.

The tax credit is nonrefundable, and unused credit amounts may not be carried back. However, a taxpayer may carry forward any unused credit amount for up to three subsequent taxable years. For pass through entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity. The bill provides that in the event federal NMTCs are disallowed or recaptured by the IRS, the state credits for the same equity investment are terminated only to the extent the state credits are disallowed or recaptured by the IEDC.

Revenue from the AGI Tax on corporations, the Financial Institutions Tax, and the Insurance Premiums Tax is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund. Since the tax credit is effective beginning in tax year 2006 for certified investment made beginning in 2006, and requires IEDC certification, the fiscal impact likely would not begin before FY 2007.

Information on the Federal New Markets Tax Credit: Section 45D of the Internal Revenue Code (IRC) allows the federal NMTC for a taxpayer who holds a qualified equity investment on the credit allowance date. The credit allowance date is the date on which the equity investment is initially made, and six anniversary dates each year thereafter. For each of those dates the entity receives a federal tax credit for the equity investment. A qualified equity investment means any equity investment in a qualified community development entity if: (1) the investment is a cash investment; (2) substantially used by the qualified community development entity to make qualified low-income community investments; and (3) such investment is designated for the purposes of this code section by the qualified community development entity.

A qualified community development entity is defined as any domestic corporation or partnership with the primary mission of serving, or providing investment capital for, low-income communities or persons. The entity must maintain accountability to residents of these low-income communities through representation on any governing board of the entity. These qualified community development entities are also required under the IRC to be certified by the Treasury Secretary.

Since 2002, allocations of creditable investment under the NMTC have been awarded by the U.S. Department of Treasury. These allocations represent the amount of investments that were designated as qualifying for the NMTC. Section 45D of the Internal Revenue Code limits the total amount of designated investments to $2 billion nationwide in 2005, and $3.5 billion nationwide in 2006 and 2007. In 2005, no entities located in Indiana received allocations. However, three entities from out of state received allocations and listed Indiana as part of their service area. In 2003-2004, two Indiana entities received allocations totaling $75 M. In 2002, two Indiana entities received allocations totaling $6 M.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: DOR; IEDC; Legislative Services Agency.

Local Agencies Affected:

Information Sources: U.S. Department. of the Treasury,
http://www.cdfifund.gov/programs/programs.asp?programID=5#2

Fiscal Analyst: Jim Landers, 317-232-9869.